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FM AMEMBASSY BANGKOK
TO RUEHC/SECSTATE WASHDC PRIORITY 3881
INFO RUCNASE/ASEAN MEMBER COLLECTIVE PRIORITY
RUEHBY/AMEMBASSY CANBERRA PRIORITY 6518
RUEHKO/AMEMBASSY TOKYO PRIORITY 8691
RUEHWL/AMEMBASSY WELLINGTON PRIORITY 1626
RUEHCHI/AMCONSUL CHIANG MAI PRIORITY 2899
RUCPDO/DEPT OF COMMERCE WASHINGTON DC PRIORITY
RUEATRS/DEPT OF TREASURY WASHINGTON DC PRIORITY

UNCLAS BANGKOK 000152

SIPDIS

SENSITIVE
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STATE FOR EAP/MLS AND EB
COMMERCE FOR EAP/MAC/OKSA
TREASURY FOR OASIA
PASS TO USTR FOR WEISEL
PASS TO FEDERAL RESERVE SAN FRANCISCO FOR DAN FINEMAN
PASS TO FEDERAL RESERVE NEW YORK FOR MATT HILDEBRANDT

E.O. 12958: N/A
TAGS: [ECON](#) [EINV](#) [PREL](#) [TH](#)
SUBJECT: THAI CABINET APPROVES FOREIGN BUSINESS ACT
AMENDMENTS

REF: A. 06 BANGKOK 7650

[1](#)B. 06 BANGKOK 7435
[1](#)C. 06 BANGKOK 6363

[1](#)1. (U) On January 9 the Thai cabinet approved amendments to the Foreign Business Act (FBA). The key changes are:
- An alien company is now defined as one in which ownership and voting control are both 51 percent non-Thai. Previously voting rights were not addressed.
- Increased monetary penalties for non-compliance accruing from the date the amendments specify that companies must restructure (i.e. 2 years from the date the amendments take effect)..
- Industries on List 3 of the Act (the vast majority of service sector businesses) that are currently operating in Thailand may apply for a foreign business license - which is assured approval - and thereby "continue operations." This waiver will not be offered to companies currently under investigation for violation of the FBA thereby capturing the Shin Corp-Temasek transaction; the political impetus for the amendments (see reftels).
- Industries on List 1 and List 2 of the Act have two years in which to restructure to become Thai owned and controlled.

[1](#)2. (SBU) Lists 1 and 2 relate primarily to agriculture, traditional handicrafts, national defense industries, and mining. However, List 1 specifically mentions "land trade" which could capture thousands of foreigners, including Amcits, who have established holding companies to own property. List 2 includes inland transportation and therefore may capture foreign express delivery companies. We have not been able to identify other industries in these lists which have any significant foreign participation.

3.(SBU) Deputy Prime Minister Pridiyathorn has invited delegates from the Joint Foreign Chambers of Commerce to meet with him on January 10 to discuss the amendments. They will seek clarification whether there are any limits on the ability of grandfathered firms to conduct operations including purchasing other companies in Thailand, increasing capital or entering new lines of business. They will also inquire whether any exemptions may be made to entities on Lists 1 and 2.

¶4. (U) Next steps are for the Council of State, essentially legal advisors to the cabinet, to review the amendments to ensure they conform with other Thai laws. Then the National Legislative Assembly will consider enacting the amendments into law.

¶5. (SBU) Comment: The initial reaction of the foreign business community is relief that the amendments weren't more onerous and few, if any, companies should be required to divest of any shares. The Thai stock exchange index, however, closed down 2.7 percent on the news that cabinet had approved the amendments in expectation of a chill on new foreign direct investment in the services sector and concern about foreign reaction to another RTG move against foreign investors following the December 18 application of capital controls. US companies have been exempt from many FBA limitations due to our bilateral Treaty of Amity and Economic Relations (AER). If investors from third nations are no longer able to enter the Thai market with operational control over their investment while US investors are largely exempted, these nations may put considerable pressure on the RTG to move towards terminating the AER.
BOYCE